Everett, et al. disclose an absorbent article comprising an absorbent core having multiple absorbent layers that interact in such a way that absorbed liquid is preferentially located in an appointed, high saturation wicking layer. Absorbed liquid is moved quickly through the absorbent layers by means of capillary action. The intake capability of the absorbent system is maintained by keeping a layer of the absorbent system at low saturation levels through as many insults of the product as possible, and controlling intake performance through control of the composite properties of the absorbent layers.

Significantly, no where in the Everett, et al. reference is it taught or suggested that the absorbent article comprises superabsorbent particles, wherein at least about 5% **(by total weight of the superabsorbent particles)** are flake superabsorbents. This is a significant requirement of claim 1 and an important aspect of Applicants' invention.

Although Everett, et al. do state that the superabsorbent particles used in their absorbent products may have a flake shape, (*see* Everett, et al., col. 15, lines 37-39), there is no disclosure in Everett, et al., including in the Examples, of an absorbent article comprising superabsorbent particles wherein at least about 5% (by total weight of the superabsorbent particles) of the superabsorbent particles are flake superabsorbents. At best, Everett, et al. teach that the first layer of their absorbent article can include a minimum of not less than about 5 wt.% **of the first layer** of superabsorbent material.[1]

Specifically, as noted in Applicants' specification on page 8, paragraph 21, it has been surprisingly discovered that by utilizing superabsorbent particles in flake form having an average surface area to volume ratio of at least about $0.05\mu m^{-1}$, the absorbent product can absorb complex bodily fluids such as plasma, blood, menses, mucus, and liquid bowel movement in an improved manner as compared to conventional absorbent products utilizing spherical-like superabsorbent particles. Furthermore, Applicants have found that by using at least about 5% (by total weight of the superabsorbent particles), more suitably, at least about 10% (by total weight of the superabsorbent particles), more suitably, at least about 15% (by total weight of the superabsorbent particles), more suitably, at least about 25%(by total weight of the superabsorbent particles), more suitably, at least about 35%(by total weight of the superabsorbent particles), more suitably, at least about 50%(by total weight of the superabsorbent particles), more suitably, at least about 70%(by total weight of the superabsorbent particles), more suitably, at least about 90%(by total weight of the superabsorbent particles), and even more suitably, about 100% (by total weight of the superabsorbent particles) of flake superabsorbent particles, the absorbent products have an improved rate of intake and capacity of for complex fluids.[2]

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[1] *See* U.S. 6,437,214 at column 7, lines 43-50.

As noted above, no wherein in Everett, et al., it is taught or suggested to use at least 5% (by weight of total superabsorbent in the absorbent article) flake superabsorbent particles. Particularly, in direct contrast to Applicants' disclosure, Everett, et al. teach the use of spherical superabsorbents. For example, in one preferred embodiment of Everett, et al., and in the Examples, the controlled-rate superabsorbent is configured with relatively large particle sizes to provide particles having a low, surface area to volume ratio, which thereby produces the desired absorbent rate. The controlled-rate superabsorbent particles can have a **substantially spherical or other three-dimensional shape which operatively generates the desired low ratio of surface-area-to-volume** and delayed absorbency rates.[3] As such, Everett, et al. fail to teach, or even recognize, claim 1's requirement that at least about 5% by total weight of the superabsorbent particles be flake superabsorbent particles.

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[2] *See* Specification, at page 20, paragraph 49.
[3] U.S. 6,437,214 at column 18, line 65 through column 19, line 5.

Moreover, as recognized by the Office in the instant Office action, Applicants' claimed invention requires the superabsorbent particles to have a specific average surface area to volume ratio and a specific average thickness, neither of which is taught in Everett, et al.[4] The Office, however, states that it would have been obvious to one of ordinary skill in the art to modify the average surface area to volume ratio and thickness of Everett, et al. to determine the most effective product. Applicants respectfully note that as stated in M.P.E.P. §2131.04, secondary considerations, such as optimizing result effective variables and commercial success, are irrelevant to 35 U.S.C. §102 rejections. Specifically, as stated in M.P.E.P. §2131, a claim is anticipated **only** if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. As such, the mere fact that the Everett, et al. reference fails to disclose the specific average surface area to volume ratio and thickness of claim 1[5] (and further, as noted above, fail to disclose an absorbent article comprising superabsorbent particles, wherein at least about 5% (by total weight of the superabsorbent particles) are flake superabsorbents), and as such, fails to disclose each and every limitation of claim 1, is sufficient to determine that claim 1 is novel over the Everett, et al. reference.

Claims 2-4, 6-10, and 12-14 depend from claim 1 and are therefore patentable for the same reasons as set forth above for claim 1 as well as for the additional elements they require.

Claim 15 is similar to claim 1 and further requires the absorbent article to be a feminine napkin. As such, claim 15 is patentable for the same reasons as set forth above for claim 1 as well as for the additional elements it requires.

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[4] Office action dated February 28, 2007 at page 4.

[5] It cannot be said that this requirement would be inherent in the flake superabsorbent of the prior art as there is no indication as to what "flake" means in terms of this parameter.

Claims 16-20 and 22-23 depend from claim 15 and are therefore patentable for the same reasons as set forth above for claim 15 as well as for the additional elements they require.

Claim 24 is directed to a method for absorbing blood or menses. The method comprises contacting the blood or menses with an absorbent article comprising superabsorbent particles wherein at least about 5% (by total weight of the superabsorbent particles) of the superabsorbent particles are flake superabsorbents and have an average surface area to volume ratio of at least about 0.05 μm^{-1}, a thickness of no more than about 30 micrometers, and a particle size distribution of from about 100 micrometers to about 850 micrometers. Claim 24 is patentable for the same reasons as set forth above for claim 1 as well as for the additional elements it requires.

Claims 25-28 depend from claim 24 and are therefore patentable for the same reasons as set forth above for claim 24 as well as for the additional elements they require.

CONCLUSION

In light of the foregoing, Applicants request reconsideration of the rejection of claims 1-4, 6-10, 12-20, and 22-28 and allowance of all pending claims. The Commissioner is hereby authorized to charge any government fees which may be required to Deposit Account No. 19-1345.

Respectfully submitted,

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